Canadian human rights commission | Commission canadienne des droits de la personne

2013 Annual Report to Parliament

ISSUES ■ OUTCOMES ■ ENGAGEMENT

35 years of protection and promotion

Canada

Contact the Canadian Human Rights Commission

For more information about human rights, contact:

National Office
344 Slater Street, 8th Floor,
Ottawa, Ontario K1A 1E1
Telephone: 613-995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661

National Aboriginal Initiative
175 Hargrave Street, Room 750
Winnipeg, Manitoba R3C 3R8
Telephone: (204) 983-2189
Toll Free: 1-866-772-4880
TTY: 1-866-772-4840 Fax: (204) 983-6132

For media inquiries, contact Media Relations at 613-943-9118

Note: All complaint-related inquiries will be transferred to the Commission's national office.

© Minister of Public Works and Government Services 2014
Cat. No. HR1-2013E-PDF
ISSN 1494-5738

This publication is available on the Commission's website at: **www.chrc-ccdp.gc.ca**

Chief Commissioner's Message 1
ISSUES 4
Human rights justice blocked for Aboriginal women 4
Canada needs a national inquiry into violence against Aboriginal women 7
Aboriginal people face greater disadvantage than non-Aboriginal people: CHRC confirms 9
Caregiving: a reality as well as a right 10
OUTCOMES 11
Our Work 11
Vision, tagline, mandate and responsibilities 11
Operating budget 12
Commission members 12
Making it easier to file a human rights complaint 13
Performance of the CHRC's new complaint assessment tool 14
A more efficient complaints process 15
How mediation works 15
How litigation works 17
Statistics 18
Legislative Changes 25
Legal Update 26
Johnstone v. Canada (Attorney General) 26
Seeley v. Canadian National Railway 27
Hicks v. Human Resources and Skills Development Canada 28
Cruden v. Canadian International Development Agency and Health Canada 29
ENGAGEMENT 30
Advice to Parliament 30
Matrimonial real property rights 30
Workplace discrimination 32
Gender identity 32

Promoting Understanding of the CHRA and EEA 33
CASHRA 2014 33
Making human rights information more accessible 34
Resolving discrimination complaints in the community 35
Compliance with the *Employment Equity Act* benefits all 36
In the News 37
Terrorism can be fought without racial profiling - the Story of the "Saudi Suspect" 37
Aboriginal challenges - Room for optimism 39
Working differently, not less 41
In Memoriam 43

Chief Commissioner's Message

Social inclusion is everyone's job. There's never been a more appropriate time to reflect on this than now — the 35th Anniversary year of the creation of the Canadian Human Rights Commission (CHRC).

We have used this past year to sharpen and update our understanding of Parliament's intention in creating the *Canadian Human Rights Act*, the legislation that defines not just the Canadian Human Rights Commission, but the vision of Canada articulated by Parliament to express the aspirations of Canadian citizens.

I thought the Prime Minister eloquently expressed that vision this past summer in answering reporters' questions about Quebec's proposed secular charter.

"Our job is social inclusion," Prime Minister Stephen Harper said. "Our job is making all groups who come to this country, whatever their background, whatever their race, whatever their ethnicity, whatever their religion, feel at home in this country and be Canadians."

His words resonated with me, as I believe they did with everyone at the Canadian Human Rights Commission. Social inclusion *is* our job. And we understand it in an even broader sense. The *Canadian Human Rights Act* defends the right of all people legally in Canada to make the best lives for themselves they are able to, free from discrimination. And so it applies not just to people newly arrived, but to people whose ancestors have been here for hundreds of centuries.

It applies to people born here who carry a visible legacy of difference. It applies to people living with disabilities, and to people with differing sexual orientation. It applies to women equally as it applies to men. It is a motto of a nation steered by an enduring concern for treating others with dignity and respect.

Canada has made significant progress in 35 years. Individuals have used the *Canadian Human Rights Act* to bring about change in their lives and in the lives of others. From closed captioning on television, to accessible buildings and bank machines, from the right of female soldiers to serve in combat roles, to the recognition of sexual orientation as a right protected in law, the *Canadian Human Rights Act* has driven progressive social change because individuals came forward to insist on its application.

Over this past year, we reflected on how we could serve Canadians more effectively in bringing this common vision of inclusion to life. We re-imagined our work as aspiring to "an inclusive society where everyone is valued and respected." We built a new tag-line around that: "My Canada includes everyone."

We went beyond words and into action. We adopted a smarter process for filtering discrimination complaints. We built a re-engineered "People First" website that focuses not on our own structures and processes but on the needs of the people we serve.

And we made a commitment, together, that we would focus our energies where they are most needed so as to prioritize protection of the most vulnerable members of Canadian society.

I have said before, and I continue to believe, that the situation facing Aboriginal people in Canada today remains one of the most pressing, if not the most pressing human rights issue facing this country.

Aboriginal people face persistent conditions of disadvantage on and off reserve. We released a report that brings together data that details this in depth. We met with James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, and shared our concerns with him. Mr. Anaya agreed that "Canada faces a crisis when it comes to the situation of indigenous peoples..."

We listened to Aboriginal women, in small discussion groups across the country, and learned that in too many cases they fear the very authorities tasked with protecting them: police and governments.

In 2008, the scope of the *Canadian Human Rights Act* was amended to include matters under the *Indian Act,* extending human rights protections to members of First Nations communities. In 2011, a three-year transition period ended and people in those communities could begin bringing complaints to us about their own governments. Since the amendment, the Canadian Human Rights Commission has received 207 complaints against the federal government and 317 complaints against First Nations governments.

But what we learned in our roundtable discussions with Aboriginal women is that for many of them, particularly in remote communities, the *Canadian Human Rights Act* is meaningless. They are unlikely to seek its protections, they say, for a number of reasons, including fear of retaliation.

In a separate article in this 35th Anniversary Edition of the Canadian Human Rights Commission's Annual Report to Parliament, we go into some detail about the roundtable discussions and what needs to be done to ensure that Aboriginal women are not deprived of access to human rights justice because they fear the consequences of speaking out.

The Canadian Human Rights Commission has heard their concerns, and will act on them.

Our process of inward reflection and re-visioning has led us to re-organize our work into two complementary streams: Promotion and Protection. This process, which I dubbed the "Path Forward," energized and mobilized the staff from the grass roots to senior management. Equally, the staff of the CHRC participated with energy and enthusiasm in the government-wide Blueprint 2020 exercise.

Finally, I note the passing this year of former Chief Commissioner Jennifer Lynch, Q.C. We have lost a leader, a role model and a friend. From the tributes that poured in from around the world, we know that Jennifer's efforts to promote and protect human rights continue to have a positive impact.

I know that I speak for all of us at the Canadian Human Rights Commission when I say that it is a privilege to work here. Our mission and our mandate speak to the core of what Canada represents, inwardly and outwardly. After 35 years, we have paused to take stock, reflect and move forward with renewed vigor.

David Langtry
Acting Chief Commissioner
Canadian Human Rights Commission

ISSUES

Human rights justice blocked for Aboriginal women

> *"I have fears of making waves. In my mind, I say it is not going to do any good, you will just be put down again."*
>
> —Aboriginal Women's Roundtable participant

Fear of retaliation is among the top factors blocking access to human rights justice for many Aboriginal women, the Canadian Human Rights Commission learned over the course of four roundtable discussions held across the country in 2013.

Close to a hundred Aboriginal women representing a wide cross-section of on-reserve and off reserve communities participated in sessions held in Winnipeg, Halifax, Ottawa and Vancouver. A final roundtable is planned for Montreal in 2014.

Cassondra Campbell, of the CHRC's National Aboriginal Initiative, helped lead the roundtable discussions in 2013.

Participants were invited to share their experiences of barriers to human rights justice. They raised a number of factors, including the complexity of human rights complaint processes, language barriers, lack of awareness and lack of support.

One factor that was consistently raised is that many Aboriginal women are discouraged by the prospect of having to challenge the police, or powerful members of their communities on whom they depend for their livelihood.

Retaliation can take many forms, the Canadian Human Rights Commission was told. Some Aboriginal women said they fear that by making a complaint they could be denied access to important health and social services. Others spoke of fears that their allegations would be met with intimidation or acts of violence. Some said they face the difficult decision of choosing between keeping quiet or leaving their community.

"Truth be told, some leaders are offenders of violence against women," one participant said. "It is so entrenched, many women live in fear. That is our sad reality, and it is tough."

The absence of community supports such as legal-aid services exacerbates other contributing factors. Along with fear of retaliation, the complexity of human rights complaints processes, lack of technology and lack of awareness are all important. This is particularly true in remote communities, where information about human rights protections can be difficult to access.

"You don't need a research project to know that scarcity of resources, lack of advocacy and low literacy are barriers to accessing human rights justice," one participant said.

Many First Nations governments are working to advance human rights in their communities, however. As an example, some participants spoke of the support they received from their leaders on advocacy efforts to address violence against Aboriginal women.

Many women expressed the will and ability to bring about positive change in their communities, offering their own recommendations on how to improve access to human rights justice. Most said that they support community-based dispute resolution. However, some women were sceptical.

"The intention is good in creating [these processes]," one woman recognized, "but reality is they don't help. Sometimes, they make it worse." Others said that considerable time and effort would be necessary before such processes would be independent and inclusive enough for women to put their trust in them.

Since the *Canadian Human Rights Act* was amended in 2008 to allow complaints related to the *Indian Act*, the Canadian Human Rights Commission has grown increasingly aware of challenges facing Aboriginal women. The decision to hold the roundtables was made to gain a better understanding of those challenges and to provide a forum for women to express their concerns. The sessions followed a model that emphasized dialogue, respect and openness. To ensure a broad range of perspectives, organizers chose invitees in discussion with regional First Nations organizations, women's groups and human rights agencies. The women were guaranteed anonymity in order to promote frank discussion in a safe environment.

Some women expressed surprise that the purpose of the roundtables was for the Canadian Human Rights Commission to listen and hear, not to lecture or teach. "It isn't very often that an instrument of justice comes looking for the people it is meant to serve," one woman said. "Usually we are trying to claw our way in."

The participants painted a bleak picture of the state of human rights, not just in many First Nations communities, but also in cities, where increasing numbers of Aboriginal women now live. Collectively, they expressed distrust of police and judicial processes intended to protect all Canadians equally.

Some women spoke of the injustice and discrimination they face in "white society," underscoring the need for continued efforts towards relationship building and reconciliation between Aboriginal peoples and other Canadians.

"Everything about me is violated – my identity, culture, roots. Racism is embedded in the system," one woman said.

"We don't cry anymore," said another. "Nothing fazes us. We grow accustomed to racial discrimination."

Senior management of the Canadian Human Rights Commission reviewed the barriers to human rights justice cited throughout the four roundtables and noted that fear of retaliation and the absence of resources were among the most commonly referenced themes.

In consequence, the Canadian Human Rights Commission issued the following statement:

- The Canadian Human Rights Commission urges the Government of Canada, advocacy groups, professional organizations, and First Nations community leaders to take concerted action to eliminate barriers to human rights justice and develop stronger in-community supports to ensure that victims of discrimination can bring complaints forward.

- The Canadian Human Rights Commission may, in special circumstances, initiate its own complaints so as to ensure vulnerable individuals remain safe and protected from acts of discrimination.

- The Canadian Human Rights Commission reminds everyone, including federal and First Nations governments, that the *Canadian Human Rights Act* prohibits threatening, intimidating or retaliating against an individual who has made a human rights complaint, given evidence, or assisted in any way in respect to a complaint. A person who is guilty of doing so is liable on summary conviction to a fine of up to $50,000.

Canada needs a national inquiry into violence against Aboriginal women

This past year may well be remembered as one in which the issue of violence against Aboriginal women and girls in Canada exploded onto the international scene.

In February of this year, Human Rights Watch, a highly regarded global advocacy group, published a damning report entitled, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*. The report alleges that RCMP officers in British Columbia fail to protect indigenous women and girls from violence and in some cases are actually the perpetrators of that violence.

The report attracted considerable international attention, shining a spotlight on an issue that drew visits to Canada in 2013 from special rapporteurs to the Inter-American Commission on Human Rights as well as Mr. James Anaya, the UN's Special Rapporteur on the Rights of Indigenous Peoples.

David Langtry, Acting Chief Commissioner of the Canadian Human Rights Commission (CHRC), met with Mr. Anaya in Ottawa. "In a modern, highly developed country like Canada," Mr. Langtry said, "it is almost unimaginable that so many indigenous peoples must grapple daily with chronic conditions of disadvantage, including discrimination, neglect, and deep multi-generational trauma."

David Langtry, Acting Chief Commissioner of the CHRC and James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, met in Ottawa in October 2013.

"I believe [this] to be one of the most pressing human rights issues facing Canada today," Mr. Langtry said in a statement after the meeting.

The Native Women's Association of Canada has documented close to 600 unsolved cases of missing or murdered Aboriginal women. The Canadian Association of Statutory Human Rights Agencies (CASHRA) and Canada's territorial and provincial premiers joined calls for the Government of Canada to establish a national action plan and an independent national inquiry into the issue of murdered and missing Aboriginal women in Canada.

The call has been met with widespread support among Indigenous peoples' organizations.

The Government of Canada's response so far has been to create a "Special Parliamentary Committee on Violence Against Indigenous Women," which began its work in June 2013. The issue of violence against Aboriginal women was also recognized in the October 16 Speech from the Throne, however no specific initiatives to confront the issue were announced.

In a speech to the Economic Club of Canada in November, before an audience that included Mrs. Laureen Harper, the Honourable Kellie Leitch, Minister of Labour and Minister of Status of Women, and the Honourable Michelle Rempel, Minister of State (Western Economic Diversification), Mr. Langtry reiterated the CHRC's call for a national inquiry.

David Langtry addresses the Economic Club of Canada, November 2013. Photo: Jake Wright

"The murder or disappearance of some 600 Aboriginal women and girls over the past 30 years is a national tragedy. [...] We must get to the root causes of these disturbing facts," he said.

The fact remains that there has been little concrete action so far. The problem requires real, sustainable solutions that will demand an unprecedented degree of effort and commitment, with federal, provincial, territorial and First Nations governments working together.

> *"Aboriginal women are disproportionately the victims of violent crime. Our Government will renew its efforts to address the issue of missing and murdered Aboriginal women."*
>
> —Speech from the Throne, October 16, 2013

Aboriginal people face greater disadvantage than non-Aboriginal people in Canada: CHRC report confirms

The Canadian Human Rights Commission (CHRC) *Report on Equality Rights of Aboriginal People* documents how persistent conditions of disadvantage are impacting the well-being of Aboriginal people in Canada.

Though grim, most of the results were not surprising: when compared to non-Aboriginal people, far more Aboriginal people live in poor quality housing, are unemployed, are serving time in Canada's prisons or have been victims of violent crimes.

The report compiles data from a number of Statistics Canada studies from 2005 to 2010 into one comprehensive study. Aboriginal people living off reserve are better represented in the statistical surveys because, in some cases, data collection on reserves is a challenge.

One of the more salient findings of the report was that Aboriginal people are more likely to have suffered violence at the hands of others and less likely to trust police. This finding is consistent with what the CHRC heard from Aboriginal women during its outreach activities in 2013.

> *"It's a familiar, depressing picture, not something Canadians take pride in. Indeed, many of us have become cynical or indifferent. Yet I remain optimistic, because change is happening."*
>
> — David Langtry in the *Regina Leader-Post* and the *Edmonton Journal*, June 2013

Caregiving: a reality as well as a right

The latest numbers from Statistics Canada show that **one in four** Canadians are providing care to family and/or close friends. Many of them are struggling to balance caregiving obligations with work responsibilities.

This challenge is becoming more and more common for Canadian families. There are a number of reasons for this. Canada's baby-boomers are getting older and living longer. At the same time, women are having more children than a decade ago, and are having them later in life. And the latest numbers show that in the majority of two-parent households, both parents work outside the home. However, women are still likely to shoulder most of the caregiving responsibilities.

What all this means is that more and more Canadian workers are having to balance work with care for their children, their aging parents or both.

This is an important issue for employers. Many have concerns about increased absenteeism, stress-leave and loss of productivity.

Study after study has shown that companies that allow flexible work arrangements have been able to reduce absenteeism, foster employee loyalty, improve morale and retention, and increase productivity.

In 2013, the Canadian Human Rights Commission (CHRC) participated in a number of discrimination cases involving caregiving. They all explore the same question: whether the right to provide care to our children and our parents should be protected by the *Canadian Human Rights Act* under the ground of family status.

The CHRC is working with employers, employees and unions to prepare a guide on caregiving for release in 2014–15.

OUTCOMES

Our Work

Vision

An inclusive society where everyone is valued and respected.

Tagline

My Canada includes everyone.

Mandate

The Canadian Human Rights Commission (CHRC) protects the core principle of equal opportunity and promotes a vision of an inclusive society free from discrimination by:

- promoting human rights through research and policy development;
- protecting human rights through a fair and effective complaints process; and
- representing the public interest to advance human rights for all Canadians.

Responsibilities

The CHRC administers the *Canadian Human Rights Act* and ensures compliance with the *Employment Equity Act*.

The *Canadian Human Rights Act* prohibits discrimination on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and a conviction for which a pardon has been granted or a record suspended.

The *Employment Equity Act* promotes equity in the workplace of the four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities.

Operating budget

The Secretary General guides the daily operations of employees. The CHRC's operating budget is $22.5 million (2013-2014 fiscal year).

Canadian human rights commission | My Canada includes everyone.

Ian Fine, a fifteen-year veteran of the CHRC, was appointed Secretary General in 2013.

Commission members

A full-time Chief Commissioner acts as the Chief Executive Officer and leads the CHRC. Three part-time Commissioners support the Chief Commissioner.

The CHRC's three part-time Commissioners as of December 31, 2013. From left to right: Roch A. Fournier, Ad. E., Sandi Bell, and Peter McCreath.

Making it easier to file a human rights complaint

The Canadian Human Rights Commission (CHRC) has redesigned its website to better serve Canadians and connect them to the information they want and need.

Most visited pages on the CHRC website in 2013

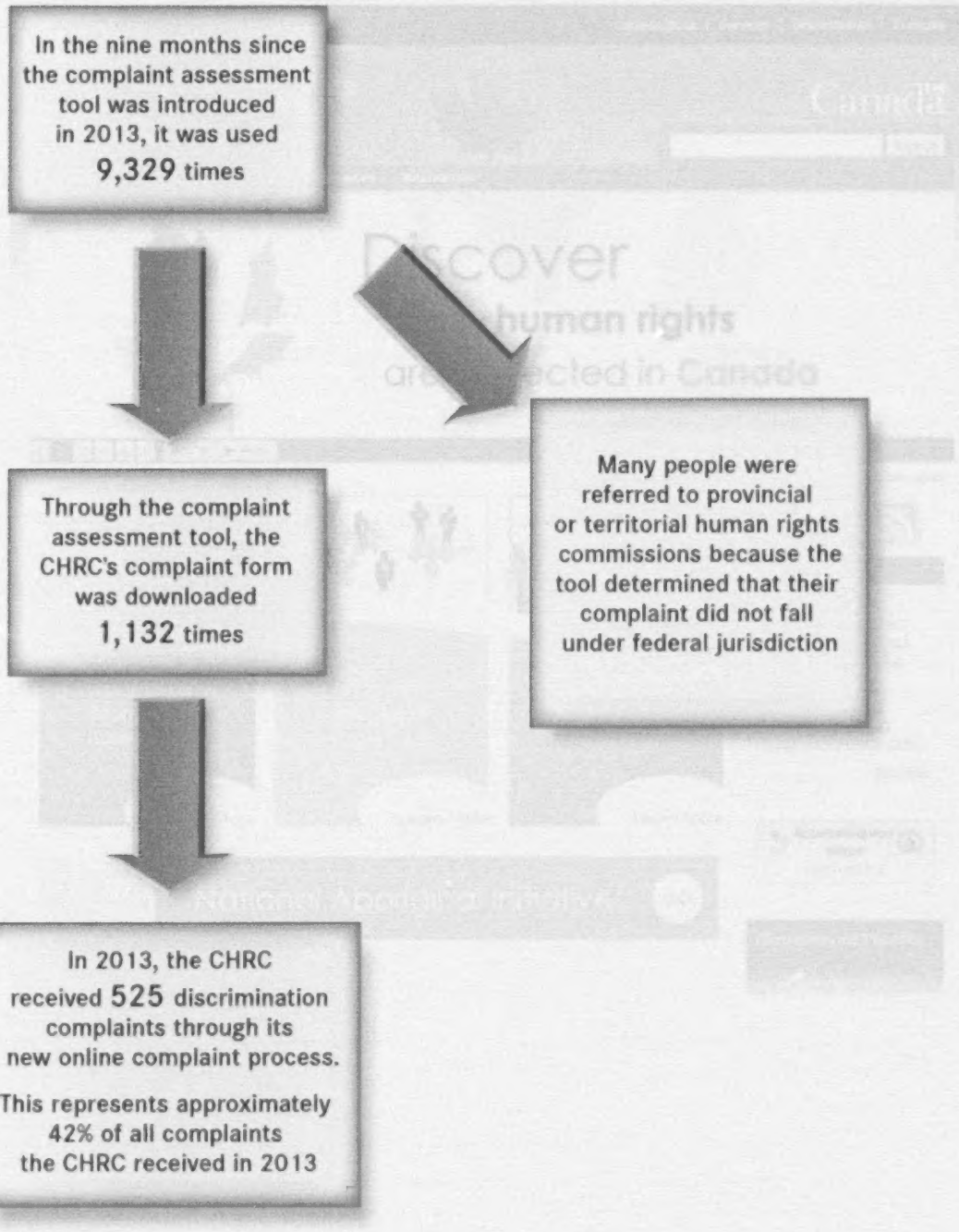
Complaint assessment tool
What is discrimination?
I want to know more about human rights
I want to complain
What is harassment?

At the heart of the redesign is a self-assessment tool that enables Canadians to find out for themselves if they can file a discrimination complaint under the *Canadian Human Rights Act*.

Before this tool was introduced, this first step could sometimes take several weeks. Now, in less than 30 minutes most visitors can determine if their complaint raises human rights issues as defined by the *Canadian Human Rights Act*, and if they should be filing a complaint with the Commission or with a different organization. Individuals are then able to download a complaint form at the end of the process. Since its launch in April, the tool has been used more than 9,300 times.

People can now also access information on discrimination and how to file a complaint about human rights through an online video in sign language, voice-over and closed captioning.

Performance of the CHRC's new complaint assessment tool


In the nine months since the complaint assessment tool was introduced in 2013, it was used 9,329 times
Through the complaint assessment tool, the CHRC's complaint form was downloaded 1,132 times
Many people were referred to provincial or territorial human rights commissions because the tool determined that their complaint did not fall under federal jurisdiction
In 2013, the CHRC received 525 discrimination complaints through its new online complaint process.
This represents approximately 42% of all complaints the CHRC received in 2013

A more efficient complaints process

The Canadian Human Rights Commission (CHRC) receives and reviews thousands of discrimination complaints. All complaints are subject to triage.

In addition, the CHRC now gives priority to complaints that are systemic—that involve practices or actions likely to affect many people. Complaints are also given priority when they are time-sensitive or involve someone in an increasingly vulnerable situation.

The first step in the triage process is to determine whether the complaint falls under the jurisdiction of the CHRC. The CHRC reviews all new and existing complaints and determines their validity under the *Canadian Human Rights Act*.

Some complaints are referred to more appropriate organizations or processes, such as provincial human rights commissions or complaint processes established by collective agreements. Most complaints that fall within the CHRC's jurisdiction are referred to mediation.

Should mediation fail to resolve the complaint, the CHRC launches an investigation. We conduct interviews and gather other evidence. Based on an analysis of this evidence, an investigator will recommend one of three options. The CHRC can dismiss the complaint. The CHRC can send the complaint to conciliation—a mandatory, collaborative, time-limited process. Or the CHRC can refer the complaint directly to the Canadian Human Rights Tribunal, where the CHRC can participate in litigation of the case.

How mediation works

Mediation is an informal process that the Canadian Human Rights Commission (CHRC) uses to resolve a large number of the complaints it receives. In 2013, the CHRC resolved **over 180** discrimination complaints through mediation.

The CHRC's primary goal is to have a positive impact on the larger public interest. Mediated settlements often inspire changes to policies and practices that prevent future complaints. Mediation also helps to conserve the resources needed to investigate and litigate more complex complaints.

Janet Spencer, a CHRC mediator, has been involved in close to 1,000 mediations over fourteen years.

The mediation process is straightforward. Here's how it works.

A discrimination complaint is referred to one of the CHRC's professional mediators, located in major cities across Canada.

The mediator contacts the parties, encourages them to enter into the process and lays out the ground rules. The rules are that any information provided cannot be used in subsequent investigations or court cases, and all parties retain the right to walk away at any time. Neither party needs legal counsel. The process is confidential and risk-free.

The mediator works directly with both the complainant and the respondent to identify potential solutions. The mediator guides the process, explains relevant laws and legal precedents, and reviews any offer to settle. Depending on the nature of the complaint and how the parties choose to proceed, mediation can involve a few telephone calls, or a series of face-to-face meetings. In most cases, mediation produces a resolution within two or three months.

Most mediated settlements result in the respondent compensating the complainant financially and adjusting policies, practices or procedures. The respondent might also be required to raise awareness of these changes.

If a solution can't be reached, the CHRC will go to the next step, which is to investigate the complaint.

Examples of successful mediation

The CHRC's goal in mediation is to settle discrimination complaints in a way that satisfies the complainant, the respondent, and the public interest. This often requires creative solutions that work best for everyone.

For example, one CHRC mediation involved an alleged unjust dismissal due to disability. In the end, the parties arrived at a solution that involved the employer providing the former employee financial compensation and a letter of recommendation, as well as launching a campaign to raise awareness of disability issues among managers and employees.

In another case, a First Nation community held a healing ceremony to raise awareness that discriminatory policies had been amended.

Another successful mediation resulted in a company agreeing to improve how it handles medical paperwork to ensure employees with disabilities are treated fairly.

How litigation works

Litigation is another way that the Canadian Human Rights Commission (CHRC) promotes and protects human rights in Canada.

The CHRC often intervenes in discrimination cases that go before the Canadian Human Rights Tribunal, the Federal Court, or the Supreme Court of Canada. The role of CHRC lawyers is to represent the public interest.

CHRC legal team prepares to make opening arguments in the Child Welfare case before the Canadian Human Rights Tribunal. From left to right: Philippe Dufresne, Senior General Counsel and Director General of Protection Branch, and Daniel Poulin, Counsel.

The litigation team focuses on discrimination cases that have far reaching implications for the Canadian public. For example, the case might have the potential to create positive change for an entire section of Canadian society. Or it might have the potential to clarify or redefine human rights law in Canada.

One person's discrimination case can have a ripple effect on the lives of many other people. An employer can look to a court ruling for clarity or guidance when facing a similar situation. Similarly, a person who thinks they are experiencing discrimination can point to a court ruling as a precedent and use it to support their request for accommodation.

Statistics

By law, the Canadian Human Rights Commission (CHRC) must look at every discrimination complaint it receives. The Commission can decide not to deal with the complaint or refer it to an alternative dispute resolution mechanism.

When possible, the CHRC encourages people to try to resolve their disputes informally and at the earliest opportunity.

In the event no agreement is reached, the CHRC may conduct an investigation. When warranted, the CHRC can refer the case to the Canadian Human Rights Tribunal for a hearing.

In 2013, the CHRC:

- received 1,236 complaints;[1]
- accepted 661 complaints;[2]
- referred 380 complaints to another redress process;[3]
- settled 234 complaints;
- dismissed 196 complaints;
- decided not to deal with 226 complaints;[4] and
- referred 72 complaints to the Canadian Human Rights Tribunal.

[1] A received complaint, also known as a potential complaint, is a contact that falls within the mandate of the CHRC, and that may lead to an accepted complaint after analysis and review.

[2] An accepted complaint is a document, in a form acceptable to the CHRC, that is filed by an individual or group of individuals having reasonable grounds for believing that a person or organization is engaging or has engaged in a discriminatory practice.

[3] This year, the number of complaints referred to another redress process includes those that were referred to the Public Service Labour Relations Board or the Public Service Staffing Tribunal before they became accepted complaints. This was not the case in previous annual reports.

[4] The CHRC can decide not to deal with complaints that do not meet the criteria listed under Section 41 of the *Canadian Human Rights Act* (e.g. the complaint fell outside of the CHRC's jurisdiction or the complaint was frivolous, vexatious or made in bad faith.)

Figure 1 – Complaints received by province or territory

	2011		2012		2013	
	#	%	#	%	#	%
Ontario	889	46	717	46	566	46
British Columbia and Yukon	278	15	225	14	155	13
Quebec	231	12	174	11	145	12
Alberta, Northwest Territories and Nunavut	169	9	166	11	138	11
Nova Scotia	88	5	71	5	53	4
Manitoba	103	5	59	4	63	5
Saskatchewan	66	3	57	4	58	5
New Brunswick	41	2	61	4	42	3
Outside of Canada	4	-	1	-	-	-
Newfoundland and Labrador	38	2	19	1	10	1
Prince Edward Island	7	-	11	1	6	-
Total	**1,914**	**100**	**1,561**	**100**	**1,236**	**100**

Figure 2 – Complaints received by types of respondents

	2011		2012		2013	
	#	%	#	%	#	%
Private Sector	699	37	558	36	493	40
Federal government*	897	47	777	50	603	49
Reserves, Bands and Councils	138	7	138	9	93	8
Unions	71	4	50	3	25	2
Individuals	109	6	38	2	22	2
Total	**1,914**	**100**	**1,561**	**100**	**1,236**	**100**

*Includes employers in the core public administration, separate federal government organizations or agencies and Crown corporations

Figure 3 – Complaints received by types of allegation cited

	2011		2012		2013	
	#	%	#	%	#	%
Employment-related (sections 7,8,10)	2,070	71	1,658	72	1,221	70
Services-related (sections 5,6)	435	15	390	17	321	19
Harassment – employment (section 14)	290	10	176	8	118	7
Union membership (section 9)	59	2	48	2	22	1
Retaliation (section 14.1)	36	1	23	1	22	1
Harassment – services (section14)	33	1	7	-	17	1
Notices, signs, symbols (section 12)	-	-	3	-	7	-
Hate messages (section 13)	4	-	-	-	-	-
Pay equity (section 11)	2	-	-	-	7	-
Intimidation (section 59)	-	-	1	-	-	-
Total	**2,929**	**100**	**2,306**	**100**	**1,735**	

*Total number of allegations cited exceeds the total number of received complaints because some complaints dealt with more than one allegation.

Figure 4 – Complaints accepted by province or territory

	2011		2012		2013	
	#	%	#	%	#	%
Ontario	437	48	337	44	312	47
British Columbia and Yukon	147	16	121	16	104	16
Quebec	106	12	110	14	70	11
Alberta, Northwest Territories and Nunavut	87	10	65	9	73	11
Nova Scotia	41	5	39	5	18	3
Manitoba	34	4	33	4	25	4
Saskatchewan	19	2	23	3	30	5
New Brunswick	18	2	13	2	22	3
Outside of Canada	7	1	2	-	-	-
Newfoundland and Labrador	5	1	9	1	5	1
Prince Edward Island	2	-	8	1	2	-
Total	**903**	**100**	**760**	**100**	**661**	**100**

Figure 5 – Complaints accepted by types of respondents

	2011		2012		2013	
	#	%	#	%	#	%
Private Sector	414	46	366	48	342	52
Federal government*	315	35	254	33	239	36
Reserves, Bands and Councils	59	7	61	8	50	8
Unions	59	7	54	7	20	3
Individuals	56	6	25	3	10	2
Total	**903**	**100**	**760**	**100**	**661**	**100**

*Includes employers in the core public administration, separate federal government organizations or agencies and Crown corporations.

Figure 6 – Complaints accepted by types of allegation cited

	2011		2012		2013	
	#	%	#	%	#	%
Employment-related (sections 7,8,9)	1,055	70	926	69	741	68
Services-related (sections 5,6)	247	16	207	15	214	20
Harassment – employment (section 14)	175	12	124	9	71	7
Union membership (section 9)	-	-	52	4	18	2
Retaliation (section 14.1)	22	1	28	2	14	1
Harassment – services (section14)	15	1	6	-	11	1
Notices, signs, symbols (section 12)	-	-	2	-	6	1
Hate messages (section 13)	1	-	1	-	-	-
Pay equity (section 11)	-	-	-	-	8	1
Intimidation (section 59)	-	-	-	-	-	-
Total	**1,515**	**100**	**1,346**	**100**	**1,083**	**100**

*Total number of allegations cited exceeds the total number of accepted complaints because some complaints dealt with more than one allegation.

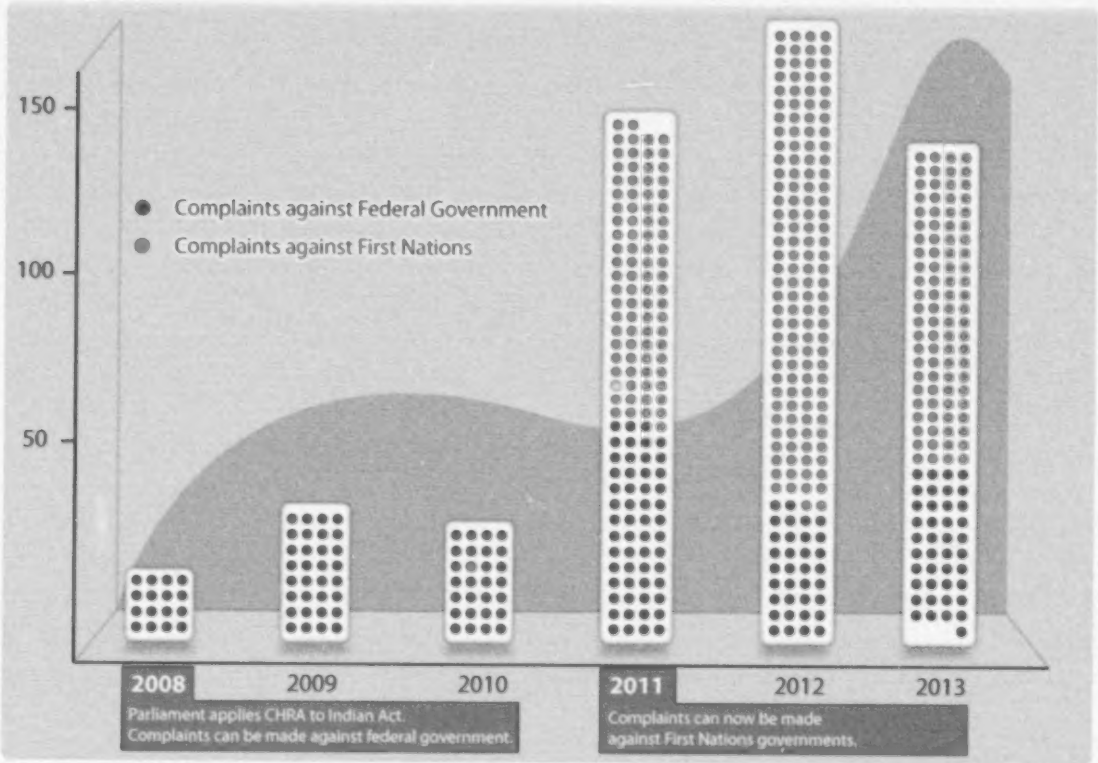
Figure 7 – Final decisions by type

	2011	2012	2013
Section 40/41 Analysis*	327	433	344
Dismissed	174	190	196
Settled**	244	209	234
Referred to Tribunal	129	113	72
Total	**874**	**945**	**846**

* Under section 40/41 of the Act, the Commission may decide not to deal with a complaint because the complainant ought to pursue another redress mechanism, the incident occurred too long ago, or because the complaint is out of jurisdiction, or considered trivial, frivolous or vexatious.

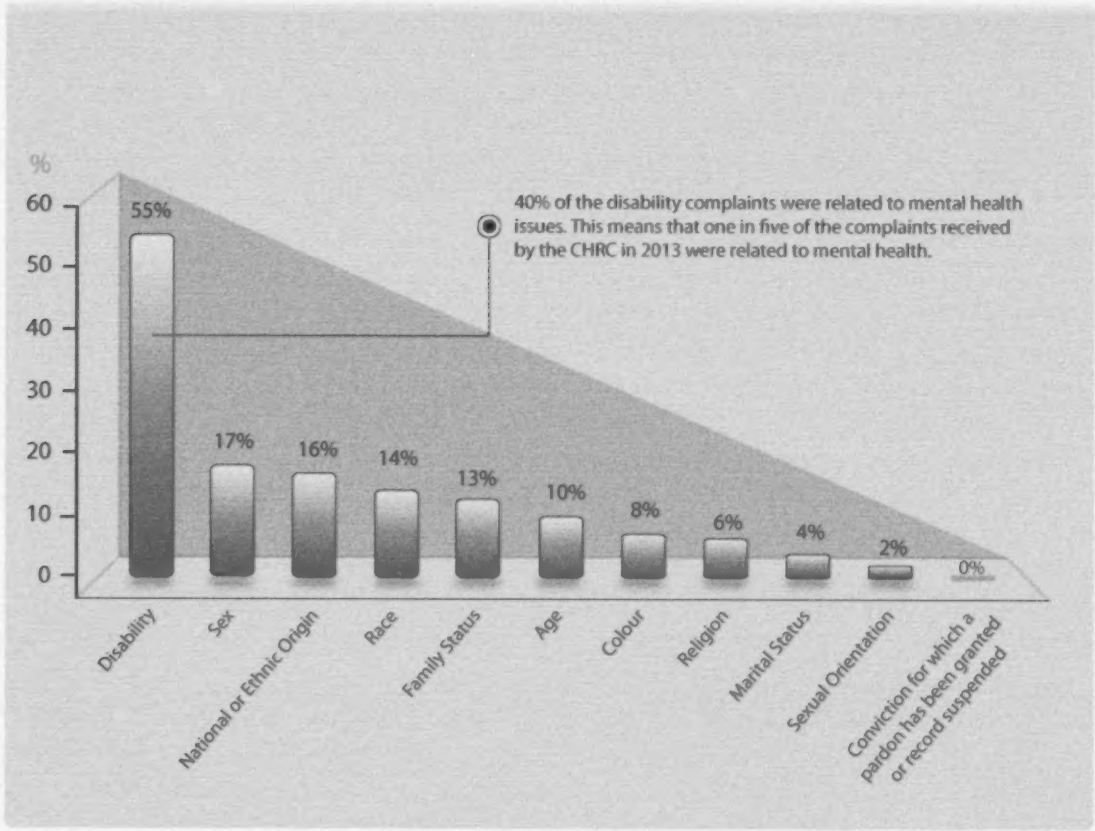
**Total number of settlements includes all settlements reached between parties, with or without help from the Commission.

Figure 8 - Evolution of discrimination complaints from First Nations



In 2008, Parliament amended the *Canadian Human Rights Act* to include matters under the *Indian Act*. The change was applicable immediately to complaints against the federal government. The change became applicable to complaints against First Nations governments in 2011.

Figure 9 - Proportion of complaints received in 2013 by ground of discrimination



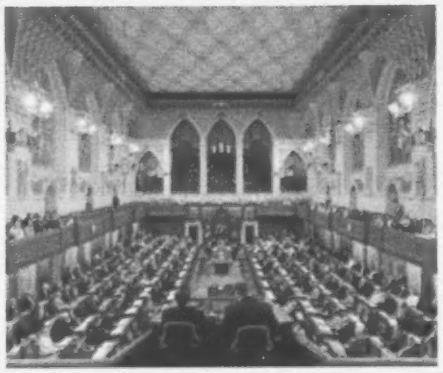
Legislative Changes

Section 13 repealed

As of June 26, 2014, section 13 of the *Canadian Human Rights Act* will no longer be in force. Section 13 prohibits hate messages over the phone and the Internet. The Bill that proposed this amendment received Royal Assent on June 26, 2013.

Bill C-4, known as the budget implementation act

On December 12, 2013, the *Economic Action Plan 2013 Act, No 2* (Bill C-4) received Royal Assent. The purpose of Bill C-4 is to implement certain provisions of the last federal budget, as well as other changes. Among these changes is an important change in how discrimination complaints from employees of the federal public service will be dealt with.



Canada's House of Commons. PHOTO: Roy Grogan, Library of Parliament.

Although federal public servants will still be protected by the *Canadian Human Rights Act*, once Bill C-4 comes into force, they will no longer be able to file employment-related discrimination complaints with the Canadian Human Rights Commission.

Instead, employees of the federal public service will have to file a grievance if they believe they are experiencing employment-related discrimination. Human rights grievances will be referred for adjudication to a newly created Public Service Labour Relations and Employment Board. This Board will replace the Public Service Labour Relations Board and the Public Service Staffing Tribunal.

Legal Update

Johnstone v. Canada (Attorney General)

Fiona Johnstone worked for the Canada Border Services Agency (CBSA). She requested that the CBSA allow her to work full-time hours over a three-day week so that she could balance her work with her caregiving responsibilities. Her situation was further complicated by the fact that her husband also worked irregular shifts and often travelled for business.

The CBSA refused to accommodate her request. Ms. Johnstone filed a discrimination complaint with the Canadian Human Rights Commission. She alleged the CBSA was discriminating against her on the basis of family status.

In 2010, the Canadian Human Rights Tribunal ruled that the CBSA had discriminated against Ms. Johnstone.

A Canada Border Services officer working at a land crossing. PHOTO: Canada Border Services Agency

In January 2013, the Federal Court dismissed the Attorney General's application for judicial review of the case. The Court confirmed that parental childcare obligations fall within the scope and meaning of the ground "family status" in the *Canadian Human Rights Act*.

At the time of writing, the Attorney General was appealing the Federal Court's decision to the Federal Court of Appeal.

> *"...it is difficult to have regard to family without giving thought to children in the family and the relationship between parents and children. The singular most important aspect of that relationship is the parents' care for children. It seems to me that if Parliament intended to exclude parental childcare obligations, it would have chosen language that clearly said so."*
>
> —Honourable Mr. Justice Mandamin, dismissing the Attorney General's application for judicial review in Canada v. Johnstone, January 31, 2013

Seeley v. Canadian National Railway

Denise Seeley is a former employee of the Canadian National Railway (CN). In 2005, she was called back to work after being laid off years prior. She was asked to report to work 1,000 kilometres away from her home.

PHOTO: Transportation Safety Board of Canada

Ms. Seeley had two young children, and her husband worked long shifts. The family needed time to figure out how they were going to find care for their kids given the new circumstances.

Ms. Seeley eventually asked to be excused from the assignment because she had still not found suitable childcare. CN refused her request. When Ms. Seeley did not report to work, CN fired her. She filed a complaint with the Canadian Human Rights Commission, alleging CN had discriminated against her based on the ground of family status.

In 2010, the Canadian Human Rights Tribunal found that CN had discriminated against Ms. Seeley.

In February 2013, the Federal Court dismissed CN's application for judicial review of the Tribunal's 2010 ruling.

At the time of writing, CN was appealing the Federal Court's decision to the Federal Court of Appeal.

Hicks v. Human Resources and Skills Development Canada

Leslie Hicks worked for the Coal Mining Safety Commission in Nova Scotia. When he was asked to relocate to Ottawa in another public service job, his wife stayed behind to care for her ailing mother. Her mother depended on her both physically and emotionally, and was not well enough to travel to Ottawa.

This meant that Mr. Hicks and his wife had to maintain dual residences. Mr. Hicks applied for an expense claim under the federal government's relocation directive. His new employer, Human Resources and Skills Development Canada (HRSDC), denied the claim. It argued that Mr. Hicks was not eligible to receive the benefit because his mother-in-law lived in an assisted-living apartment rather than the family's home.

Leslie Hicks filed a complaint with the CHRC on the ground of family status. His case was referred to the Canadian Human Rights Tribunal in 2011.

In September 2013, the Tribunal found that the HRSDC had discriminated against Mr. Hicks based on the ground of family status.

At the time of writing, the Attorney General of Canada was seeking judicial review of the Tribunal decision in this case.

> *"...just as the jurisprudence recognizes family status as protecting the childcare obligations of a parent towards a child, the reciprocal eldercare responsibilities of a child towards their parent should also be recognized in the same fashion."*
>
> — Réjean Bélanger, Member of the Canadian Human Rights Tribunal, September 18, 2013

Cruden v. Canadian International Development Agency and Health Canada

Bronwyn Cruden, an employee of the Canadian International Development Agency (CIDA), applied for a posting to Afghanistan. CIDA refused because it would not have been able to provide Ms. Cruden with the medical support required for her type 1 diabetes. Ms. Cruden filed a discrimination complaint with the Canadian Human Rights Commission on the ground of disability.

The Canadian Human Rights Tribunal found that CIDA had not attempted to accommodate Ms. Cruden's needs sufficiently even though posting Ms. Cruden to Afghanistan would have caused CIDA **undue hardship**.

The Attorney General filed for judicial review of the Tribunal decision.

Photo: Sergeant Matthew McGregor, Canadian Forces Combat Camera, © 2011 DND-MDN Canada

In May 2013, the Federal Court ordered that the Tribunal decision, and all remedies, be set aside. The Court found that discrimination had not taken place in Ms. Cruden's case because posting her to Afghanistan would have caused CIDA **undue hardship**.

At the time of writing, the CHRC was appealing the Federal Court's decision.

What is undue hardship?

While employers have a duty to accommodate their employees, sometimes accommodation is not possible because it would cause ***undue hardship.***

Under the *Canadian Human Rights Act*, an employer or service provider can claim undue hardship when changes to a policy, practice, by-law or building would be too costly, or would create risks to health or safety. To prove undue hardship, evidence must show the nature and extent of the hardship. There is no precise legal definition of undue hardship nor a standard formula for determining it.

ENGAGEMENT

Advice to Parliament

In keeping with the Paris Principles, which guide the work of the Canadian Human Rights Commission (CHRC) and other national human rights institutions around the world, the CHRC advises Parliament regularly on matters related to human rights in Canada. In 2013, the CHRC was called before Parliament on the following issues.

Matrimonial real property rights

When a family goes through separation or divorce in Canada, provincial or territorial law ensures that ownership of the family home and division of other assets is dealt with fairly.

But until this year, no such laws applied to First Nations communities. Because of this, many First Nations women had no legal claim to their home or matrimonial property when their relationships ended. In many cases, they found themselves forced to leave their communities, often seeking refuge in urban environments.

On June 19, 2013, Parliament passed the *Family Homes on Reserves and Matrimonial Interests or Rights Act,* giving men and women equal rights to the family home and other matrimonial property in the event of a relationship breakdown, divorce or death.

Proponents of the law hailed it as a significant milestone for Aboriginal women's rights.

"Currently, Aboriginal women in our country cannot go to court and seek exclusive occupation of the family home or apply for emergency protection orders while living in a family home on a reserve," Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development said. "The bill extends this basic protection [of matrimonial law] to individuals living on reserve."

Minister of Aboriginal Affairs and Northern Development Bernard Valcourt responds to a question during Question Period in the House of Commons Tuesday October 22, 2013 in Ottawa. Photo: Canadian Press

Others have criticized the law for not offering enough in the way of resources or community supports to prevent the victimization of women living on reserves. Speaking before the Standing Committee on the Status of Women as it studied the Bill, Councillor Joan Jack of the Berens River First Nation asked, pointedly: "if this legislation goes through and there are some women on reserve who want to access justice, how are they supposed to do that?"

Joan Jack, Councillor, Berens River First Nation in Manitoba. Photo: Wayne Glowacki, Winnipeg Free Press

In his address to the Committee, Acting Chief Commissioner David Langtry raised similar concerns. There are limited resources in many communities, he observed, for "on-reserve measures associated with matrimonial real property such as housing, emergency shelters, counselling and legal assistance." Nevertheless, Mr. Langtry stressed that addressing the matrimonial rights of First Nations women through new federal legislation was an "urgent human rights matter."

Acting Chief Commissioner David Langtry, appearing before the House of Commons Standing Committee on the Status of Women, May 1, 2013. Courtesy: Speaker of the House of Commons

Under the new law, First Nations governments can choose to set up their own matrimonial real property laws, or defer to provisional federal rules. In December 2013, the federal government announced $5 million of funding over five years for a new Centre of Excellence for Matrimonial Real Property. Operating at arm's length from the federal government, the Centre of Excellence will assist First Nations in implementing the new legislation or in developing their own matrimonial real property laws. The Centre will also provide information about the new legislation and alternative dispute resolution mechanisms to First Nations members.

Workplace discrimination

On April 22, 2013, the Canadian Human Rights Commission (CHRC) appeared before the Senate Committee on Human Rights. The Committee was studying whether federal public service hiring and promotion practices are discriminatory. The study also looked at whether employment equity targets are being met.

In his presentation to the committee, Acting Chief Commissioner David Langtry said that equality of opportunity in Canada's workplace is a realistic and attainable goal. He also spoke about how the CHRC's employment equity compliance audits help break down barriers to employment.

Gender identity

Bill C-279, introduced in the last session of Parliament, would amend the *Canadian Human Rights Act* to include "gender identity" as a prohibited ground of discrimination.

In his presentation to the Senate Standing Committee on Human Rights, Acting Chief Commissioner David Langtry said that "adding the ground of 'gender identity' to the Act would make protection for members of the transgender community explicit." He added that, "it would promote acceptance, [and] would send a clear message that in Canada, everyone has the right to be treated with equality, dignity and respect."

Mr. Langtry also said that, "the discrimination or harassment experienced by people who are transgender is often hostile and sometimes hateful and violent." He spoke of how many transgender people do not identify themselves because they are afraid of being shunned by society or of being harassed or treated unfairly. He added that in some cases, transgender people are afraid for their safety.

Jenna Talackova registered to compete in Miss Universe Canada 2012. She was disqualified for being transgender. Public reaction was swift, pageant organizers reversed their position, and Ms. Talackova was eventually allowed to compete. Following the decision, Ms. Talackova's attorney, Gloria Allred, a well known equality rights advocate, said in an interview with ABC's Good Morning America: "We want everyone to be judged not on how they were at birth...but on their merits." Photo: torontosun.com

Bill C-279 was before the Senate when Parliament was prorogued in September 2013. At the time of writing, the Bill had been reintroduced in the Senate.

Promoting Understanding of the CHRA and EEA

CASHRA 2014

Planning is underway for the annual conference of the Canadian Association of Statutory Human Rights Agencies (CASHRA), to be hosted this year by the Canadian Human Rights Commission (CHRC). The event will be held in Ottawa on June 11-12, 2014, and will be themed *"Accommodation Works! Toward a More Inclusive Society."*

In addition to CASHRA, the Mental Health Commission of Canada will support the conference as a partner. The annual CASHRA event is Canada's leading human rights conference.

Conference participants will include employers, unions, non-governmental organizations, First Nations leaders, and provincial and territorial human rights commissions. Together, they will explore human rights from a provincial, territorial, federal and international point of view, discuss best practices, and learn about new resources.

> In May 2013, at last year's CASHRA conference, Acting Chief Commissioner David Langtry was elected President of the association for a two year term. Secretary General Ian Fine was elected Treasurer.

The CHRC is consulting with employers and policy experts to determine the topics that the conference will cover, including accommodation, mental health in the workplace, dealing with conflicting rights, removing barriers to inclusiveness and finding the right balance in our changing demographics.

Panel discussions, plenary sessions, interactive learning workshops and an examination of updates and trends promise participants an interesting and enriching experience.

Making human rights information more accessible

In September 2013, the Canadian Human Rights Commission, in partnership with the Canadian Association of the Deaf, launched "Your Guide to Understanding the *Canadian Human Rights Act*," a video in American and Québec sign languages, as well as English and French captioning and voice-over. The video provides information on topics including discrimination, harassment, and how to file a discrimination complaint.

The video benefits not only members of the Deaf, deafened and hard of hearing community, but also people with low literacy.

Jim Roots, Executive Director of the Canadian Association of the Deaf, shepherded the "Your Guide to Understanding the *Canadian Human Rights Act*" accessible video project.

Jim Roots, Executive Director of the Canadian Association of the Deaf, shepherded the project. "Our two organizations have both done a lot of work over the decades to explain human rights and discrimination to the Deaf community," Mr. Roots said. "Having a fully accessible step-by-step guide to filing a human rights complaint fills a real need."

Resolving discrimination complaints in the community

The Canadian Human Rights Commission (CHRC) has released a comprehensive guide to help First Nations governments address discrimination complaints in their communities using their own resources.

The *Toolkit for Developing Community-based Dispute Resolution Processes in First Nations Communities* provides guidance on how to engage the community in the process, how to develop new policies, how to go about financing, and how to train fellow community members in dispute resolution.

The CHRC worked closely with First Nations organizations to ensure that the Toolkit speaks directly to the needs, traditions and values of First Nations communities, such as incorporating the Seven Grandfather Teachings into a dispute resolution process.

The Toolkit is available on doyouknowyourrights.ca.

Compliance with the *Employment Equity Act* benefits all

"All aboard for an inclusive passage!"

Marine Atlantic runs a ferry service between Newfoundland and Nova Scotia. Its mission is to provide a safe, reliable, courteous service to all passengers. As a Crown corporation, Marine Atlantic is subject to both the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA).

Marine Atlantic's ferry service between Newfoundland and Nova Scotia is now fully accessible. Courtesy: Marine Atlantic

The Canadian Human Rights Commission (CHRC) performs employment equity audits to ensure that federally regulated organizations are meeting their obligations under the EEA.

Michel de Cesaré, an auditor in the CHRC's Montreal office, performed an employment equity audit of Marine Atlantic. He noted several areas where Marine Atlantic could improve its efforts towards better representation of the four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities.

Michel de Cesaré, an auditor in the CHRC's Montreal office, commended Marine Atlantic's facilities as a model of accessibility.

Marine Atlantic responded with energy and enthusiasm.

It created a new diversity committee. It recruited new members, including people from unions and the four designated groups. And it provided training to employees on topics such as workplace rights and working with persons with disabilities.

Marine Atlantic did not stop there. It adapted its passenger cabins for people with disabilities. It made its facilities a model of accessibility. This included accommodation for people with hearing impairments, allergy concerns, or those travelling with service animals. Marine Atlantic also established a special rate for people attending to passengers with visual impairments or other disabilities.

In the News

Terrorism can be fought without racial profiling - the Little-Known Story of the "Saudi Suspect"

By David Langtry

As published in the ***Globe and Mail***, April 29, 2013.

In the chaotic minutes after two bombs tore through the crowd near the finish line at the Boston Marathon, racial discrimination turned a terror victim into a terror suspect.

As a shocked world watched, media reported that a young Saudi man had been apprehended.

He had been watching the race and was badly hurt by the first bomb. CBS News said a bystander saw him running and tackled him. People thought he looked suspicious.

While doctors treated him in hospital, his apartment was searched and his roommate interrogated. His name was endlessly tweeted. Media dubbed him the Saudi suspect.

The next day, authorities cleared him. Wrong place, wrong time, said CNN.

Yes, it was wrong. Racial profiling is wrong. And it's also bad policing.

Research supports this. There is no evidence that racial profiling helps identify terrorists. What can be proven, is that profiling creates distrust and resentment among members of ethnic or religious communities. It leads them to believe they are unfairly targeted by law enforcement.

Public trust is critical to combating criminal activity. We all have a civic duty to report crime, but in practice, when trust is absent, people may fear the consequences of coming forward.

Hence my praise of how the RCMP handled the announcement of the arrest of two Muslim men allegedly connected to a plot to bomb a Toronto-New York train. The RCMP clearly invested care and thought in managing the impact of the news on Canada's Muslim communities. As reported in this newspaper last week, this approach has been years in the making.

The RCMP went out of their way to credit a Toronto imam for information leading to the arrests, and invited community leaders to a private briefing before breaking the news. One leader, Muhammad Robert Heft, told the Canadian Press that the briefing sent a signal: police are not targeting Muslims.

It's not clear all Canadian police understand the work needed to build trust. Facts can help. Paradoxically, one important set of facts requires the collection of racial data. It may sound discriminatory, but it's actually the best way to ensure police are operating without racial bias.

Starting this summer, Ottawa will be the first major Canadian city to do just that. Ottawa police will start collecting statistics on the race of people involved in traffic stops. This approach owes much to the experience of the Kingston police force, the first in Canada to record racial information.

Collecting racial data can show whether racial profiling is taking place. Kingston police found that it was. In some instances, officers' prejudices were getting in the way of the job. This enabled them to take corrective measures.

What's more, Kingston police learned they need to be wary of the prejudices of people who report crimes. This is precisely what happened to the young man from Saudi Arabia. Wounded, scared, running for his life, a bystander accused him of wrongdoing because of how he looked.

Regardless of the fact that he was cleared (and to be fair, Boston law enforcement had no option but to question him once he was turned in), false news about the Saudi man's alleged involvement continues to circulate on the internet and in social media. Because of racial discrimination, the name of an innocent man will forever be linked to this horrific, senseless act.

Some believe this kind of injustice is unavoidable. They argue that public security and human rights are often at odds, and that in some cases we may have to give up one to have the other.

The Canadian Human Rights Commission disagrees, and so does the Supreme Court of Canada. As Justices Iacobucci and Arbour wrote in a 2004 decision, a response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy.

Our democratic values define us. In times of panic and confusion we must be at our most vigilant in protecting them.

David Langtry is Acting Chief Commissioner of the Canadian Human Rights Commission.

Aboriginal challenges - Room for optimism

By David Langtry

As published in the ***Regina Leader-Post***, June 18, 2013 and the ***Edmonton Journal,*** June 20, 2013.

This week, the Canadian Human Rights Commission issued a report on the impact of persistent conditions of disadvantage on Aboriginal people in Canada.

Frankly, so much has been written on this subject that there's little here that will come as a surprise.

It is well known, for example, that disproportionate numbers of Aboriginal people live in poor quality housing, earn less than other Canadians, or are unemployed; that they are more likely to have suffered violence at the hands of others and less likely to trust the police; that they are over-represented in our prisons and once in, less likely to get parole.

It's a familiar, depressing picture, not something Canadians take pride in. Indeed, many of us have become cynical or indifferent. Yet I remain optimistic, because change is happening.

I am aware that not everyone shares my optimism. I am aware that some new developments have stirred controversy. But the desire for change is undeniable, and it's happening now.

It's happening in the courts, where First Nations and Métis have won landmark victories that have potential to accelerate economic self-sufficiency.

It's happening at the level of the federal government, which has given an important boost to accountability and transparency of governing institutions, in part by extending the Canadian Human Rights Act to all First Nations.

It's happening on the ground, as First Nations take advantage of newly minted laws to take control of their resources and finances and create opportunity within their communities as never before.

Some First Nations are gaining access to low-cost, long-term financing for major infrastructure projects by issuing bonds, in the same way municipalities raise capital. As reported recently in Maclean's, the prospering First Nation community of Membertou, N.S. (it boasts one of the lowest on-reserve unemployment rates in Canada) hopes to spur further growth this way. Close to 100 First Nations are working with the First Nations Finance Authority to access capital on the international bond market.

The Framework Agreement on First Nations Land Management is another example. Over 80 communities have taken steps to implement land governance, assume jurisdiction over reserve lands and resources, and opt out of some 30 land-related sections of the Indian Act.

Chief Austin Bear, Chair of the First Nations Land Management Resource Centre, calls the agreement "a catalyst to economic self-sufficiency" and reports an influx of First Nations members returning to their communities, enticed by the new opportunities it has given rise to.

There are so many examples of this forward-looking approach that one scholar, the Macdonald-Laurier Institute's Ken Coates, has called it an "unsung, quiet revolution."

In a report recently released by the Institute, Coates paints an upbeat picture of prospects for Aboriginal economic improvement, citing success stories of Aboriginal entrepreneurship and new models of collaborative development. "(F)ar from being a vain and pious hope," he writes, "such models are already emerging."

Education stands out as one of the most intractable barriers to opportunity. Our record is not good. Canadian governments inflicted decades of trauma through the residential schools program, under which tens of thousands of Aboriginal children were forcibly removed from their families and shipped off to desolate Victorian barracks to have their indigenous identities beaten out of them. The pain is our legacy too. It will take generations to undo.

"Education got us into this mess," says Chief Wilton Littlechild, a survivor of residential schools and today a member of the Truth and Reconciliation Commission, "and education will get us out of it."

The time to act is now. Aboriginal children are the fastest growing population in Canada. Yet on reserves, fewer than 50% finish high school. Nearly half of all Canadian children in foster care are Aboriginal. How many of them will finish high school?

I commend the federal government's commitment to work with First Nations to create the First Nations Education Act. I am hopeful this will bear fruit. But let's improve child welfare services on reserves so that families get the support they need and fewer children end up in care.

I continue to hope that when the Canadian Human Rights Commission goes back to take the pulse of Aboriginal people in Canada five, ten, or fifteen years from now, more of the positive impacts of the transformative change that is already occurring will be visible.

Because failure is not an option.

David Langtry is Acting Chief Commissioner of the Canadian Human Rights Commission

Working differently, not less

By David Langtry

As published in the ***Ottawa Citizen***, October 4, 2013.

A number of human rights cases are currently testing how far employers need to go to accommodate the needs of workers with family caregiving obligations. Until now, the debate has focused on parents with young children.

But a recent ruling by the Canadian Human Rights Tribunal, reported in the Citizen Thursday, has broadened the debate to include aging parents for the first time.

The case involves Leslie Hicks, an HRSDC employee, now retired. The tribunal's ruling, and award of $35,000 in damages, boldly defines human rights law as protecting not just the needs of employees who care for children, but also those of employees who care for parents.

Some employers are worried. After all, many of us have children. And many of us have aging parents. Some fear that decisions in these cases could open the floodgates for requests for shift changes, leaves, temporary absences, and more. Not as a privilege, not as a reward for good work, but as a right.

Such fears are not warranted. First, people seeking accommodation are often among the hardest-working and most productive employees.

Second, a request for accommodation must be based on need, after all other reasonable options have been exhausted. It's not an issue of entitlement. It's about working differently, not working less.

Whatever the concerns of employers about new interpretations of the so-called family status right, and however the courts decide these matters, it won't change what's happening in millions of families. The pressures on workers to provide care for aging or disabled loved ones are mounting.

Statistics Canada reported last month that 8.1 million Canadians — about one in four — are providing care to a loved one with a long-term health condition, disability or problems associated with aging. Many of these caregivers are "sandwiched" between caring for a parent and caring for children.

Workers and their employers are feeling the impact. A recent C.D. Howe Institute study suggests that the overall rise in absenteeism is due in part to people calling in sick to take care of others.

As boomers age, the need for eldercare will obviously increase. StatsCan predicts the number of seniors who will need help or care will double in the first three decades of this century.

Numerous studies show that balancing home and work can be a major source of stress. Only by working together will employers and employees find effective solutions.

Employees seeking accommodation will need to be transparent with their employers, and be ready to explore a variety of caregiving options. Employers, for their part, will have to look at their HR policies and be open to flexible work arrangements.

The good news is that many employers are already doing this. According to the Conference Board of Canada, 78 per cent of organizations offer flexible work hours and more than half allow their employees to telecommute.

Canada needs to ensure that no person is prevented from making a productive contribution to society because family care-giving obligations get in the way. Job sharing, part-time work, shift changes, and leaves are among the options that should enable Canadians to continue to be productive, valuable employees while still meeting family responsibilities.

Of course, employers must look at each accommodation request individually. The type of industry, the nature of the job, the availability of technology, the associated costs, and other economic, logistical and scheduling challenges must also be considered.

But it's worth the effort.

Employees prefer to work for organizations that support their needs. Studies show that companies that allow flexible work arrangements have been able to reduce absenteeism, foster employee loyalty, improve morale and retention, and increase productivity.

Our children need us, and often so do aging parents. Caring for their needs, is not just something we do out of love, duty, or obligation, it is also a right.

David Langtry is Acting Chief Commissioner of the Canadian Human Rights Commission.

In Memoriam

Burnley Allan "Rocky" Jones
1941 – 2013

Photo CREDIT: barockyjones.com

Jennifer Lynch, Q.C.
1950 – 2013

Elijah Harper
1949 – 2013

Photo CREDIT: Canadian Press

Dr Henry Morgentaler
1923 – 2013

Nelson Mandela
1918 – 2013

Maria Barile
1953 – 2013

COURTESY: Tanya Magni

"No one is born hating another person because of the colour of his skin, or his background or his religion. People must learn to hate. And if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite." - *Nelson Mandela*